

M e m o r a n d u m**280.0780**

To: San Jose – Auditing (RGS)

Sacramento, California
May 19, 1954

From: Headquarters – Sales Tax Counsel (WWM)

Subject: K--- J--- Co. of S--- J---, Inc.
XX South --- Street
--- ---, California

Account No. SR --H XX XXXXXX

This is in answer to your memorandum of May 7 and the attached memorandum of May 6. It appears that K--- J--- offers certain personal property such as towels, etc., to former customers who will reopen or add to their account within ten days after receiving a notice to that effect from K--- J---. In other words, if the former customer will buy something within the prescribed period, he receives the premium merchandise free of charge and the additional merchandise is never furnished until other merchandise is purchased. The premium merchandise is listed on the sales invoice with no sales amount. You inquire whether K--- J--- is selling or giving the premium merchandise away under the California Sales and Use Tax Law.

We are of the opinion that K--- J---, under the above facts, may properly be regarded as a reseller of the premium merchandise, in view of the fact that the property is not given away for advertising purposes, given away for sample use, or awarded as prizes the winning of which depends upon chance or skill. Therefore, it apparently comes within the exact wording of the last paragraph of Ruling 72, since it is only given together with tangible personal property sold at the same time.

W. W. Mangels

WWM:ja